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*Special Litigation Counsel for  
Debtor / Plaintiff FMTB BH LLC*

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
In re:

Chapter 11

FMTB BH LLC,

Case No. 18-42228-cec

Debtor.

-----X  
FMTB BH LLC,

Adv. Pro. No. 18-01052-cec

Plaintiff,

- against -

1988 MORRIS AVENUE LLC, 1974 MORRIS  
AVENUE LLC, 700 BECK STREET LLC, 1143  
FOREST AVENUE LLC, and 1821 TOPPING  
AVENUE LLC,

Defendants.

-----X  
**DECLARATION OF JOSEPH ZELMANOVITZ IN OPPOSITION  
TO DEFENDANTS' MOTION FOR A STAY PENDING APPEAL**

Joseph Zelmanovitz declares under penalty of perjury pursuant to 28 U.S.C. § 1746, that  
the following is true and correct:

1. I am an attorney duly admitted to practice before this Court and am a member of  
Stahl & Zelmanovitz, special litigation counsel for Debtor/Plaintiff FMTB BH LLC ("FMTB").

I respectfully submit this declaration in opposition to the motion of defendants for a stay pending appeal.

2. Attached to this declaration as Exhibit A is a true copy of defendants' Notice of Appeal, dated September 10, 2020 and filed September 11, 2020, from the Decision and Order of the Bankruptcy Court entered on or about September 2, 2020. (Copies of the Decision and Order are attached to defendants' motion papers.)

3. Attached to this declaration as Exhibit B is a true copy of the Order Authorizing Debtor to Assume Executory Contracts and Granting Related Relief (the "Assumption Order"), entered October 1, 2020.

4. Attached to this declaration as Exhibit C is a true copy of my letter to The Honorable Allyne R. Ross, United States District Judge, Eastern District of New York, dated September 22, 2020, requesting a pre-motion conference regarding FMTB's prospective motion to dismiss defendants' appeal.

5. Attached to this declaration as Exhibit D is a true copy of my letters to defendants' counsel, dated October 2, 2020, notifying them of the scheduling of the closings on the five properties that are the subject of the adversary proceeding, for October 26, 2020, at 10 a.m., time being of the essence.

6. Attached to this declaration as Exhibit E is a true copy of the Order of Judge Ross, entered October 21, 2020, stating that a pre-motion conference for FMTB's prospective motion to dismiss defendants' appeal was not necessary, and authorizing the filing of the motion by October 30, 2020.

7. FMTB's counsel appeared for the scheduled closing on October 26, 2020, but defendants stated that they would not proceed with the closing in light of the filing of their motion for a stay pending appeal.

Executed this 28<sup>th</sup> day of October, New York, New York.

/s/Joseph Zelmanovitz  
Joseph Zelmanovitz

## **EXHIBIT A**

JS 44C EDNY (Rev. 3-9-2018)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

FMTB BH LLC

**(b) Attorneys (Firm Name, Address, and Telephone Number)**

Joseph Zelmanovitz, Esq., Stahl & Zelmanovitz; 747 Third Avenue,  
Suite 33B, New York, New York 10017

**DEFENDANTS**

1988 MORRIS AVENUE LLC, 1974 MORRIS AVENUE  
LLC, 700 BECK STREET LLC, 1143 FOREST  
AVENUE LLC, 1821 TOPPING AVENUE LLC,

**Attorneys (If Known)**

Brian J. Markowitz, Esq., Daniel Goldenberg, Esq.; Goldstein Hall  
PLLC, 80 Broad Street, Suite 303, New York, New York 10004

**II. BASIS OF JURISDICTION (Place an "X" in One Box Only)**

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)**

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITING A BRIEF STATEMENT OF CAUSE) (DO NOT CITE JURISDICTION STATUTES UNLESS DIVERSITY)**

Please refer to the additional page annexed hereto.

**V. ORIGIN (Place an "X" in One Box Only)**

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation - Transfer  
☐ 8 Multidistrict Litigation - Direct File

**VI. NATURE OF SUIT (Place an "X" in One Box Only)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input checked="" type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

Specific Performance

CHECK YES only if demanded in complaint:

**JURY DEMAND:**☐ Yes ☐ No**VIII. RELATED CASE(S)**

IF ANY

(See instructions):

JUDGE Carla E. CraigDOCKET NUMBER 18-42228-CEC

DATE

September 10, 2020

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITING A BRIEF STATEMENT OF CAUSE) (DO NOT CITE JURISDICTION STATUTES UNLESS DIVERSITY)**

a. FRBP 8002

b. Whether, in deciding Plaintiff's five distinct claims for the specific performance of five contracts for the sale of five properties, that had a contractually agreed to time of essence (TOE) closing (i) the bankruptcy court erred, as a matter of law, in concluding that (a) the mend-the-hold doctrine does not prohibit Plaintiff from alleging post-hoc allegations of breach other than those specified in Plaintiff's TOE Rejection Letters; and (b) the law allows Plaintiff to maintain causes of action despite not appearing at the TOE closing and demanding Defendants' performance; and (ii) the bankruptcy court erred in finding that (a) the factual record demonstrates Plaintiff's readiness, willingness, and ability to close on Law Day, (b) the Plaintiff did not default under the Contracts by failing to appear at the TOE closing, and (c) the factual record demonstrates that Defendants breached their respective contract and were unable to transfer the properties in accordance with the contract.

**PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)**

Kings County  
1335 50 Street, Suite 3G  
Brooklyn, NY

**DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)**

All Defendants are located in Bronx County  
1974 Morris Avenue LLC - 1974 Morris Avenue, Bronx, NY  
700 Beck Street LLC - 770 Beck Street, Bronx, NY  
1143 Forest Avenue LLC - 1143 Forest Avenue, Bronx, NY

1821 Topping Avenue LLC - 1821 Topping Avenue, Bronx, NY  
1988 Morris Avenue LLC - 1988 Morris Avenue, Bronx, NY

**DEFENDANT(S) ADDRESS UNKNOWN**

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County?  
☐ Yes ☒ No
- 2.) If you answered "no" above:  
a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? ☐ Yes ☒ No  
b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? ☒ Yes ☐ No  
c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:  
\_\_\_\_\_

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? ☐ Yes ☒ No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.



Yes



No

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?



Yes (If yes, please explain)



No

I certify the accuracy of all information provided above.

Signature: \_\_\_\_\_

JS 44C/EDNY Reverse (Rev. 03/18)

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority for Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.
  - a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below. United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box. Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. Do not cite jurisdictional statutes unless diversity. Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- V. **Origin.** Place an "X" in one of the seven boxes.
 

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.

Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.

**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.



[Caption as in Form 416A, 416B, or 416D, as appropriate]

**NOTICE OF APPEAL AND STATEMENT OF ELECTION****Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s):  
1988 Morris Avenue LLC, 1974 Morris Avenue LLC, 700 Beck Street LLC,  
1143 Forest Avenue LLC, 1821 Topping Avenue LLC
2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

☐ Plaintiff☒ Defendant☐ Other (describe) \_\_\_\_\_

For appeals in a bankruptcy case and not in an adversary proceeding.

☐ Debtor☐ Creditor☐ Trustee☐ Other (describe) \_\_\_\_\_**Part 2: Identify the subject of this appeal**

Post trial decision regarding claims for specific performance of five contracts of sale for the sale of 5 properties.

1. Describe the judgment, order, or decree appealed from: \_\_\_\_\_
2. State the date on which the judgment, order, or decree was entered: September 3, 2020

**Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: 1988 Morris Avenue LLC Attorney: Brian J. Markowitz  
Daniel Goldenberg  
Goldstein Hall PLLC  
80 Broad Street, Suite 303  
New York, New York 10004
2. Party: 1974 Morris Avenue LLC Attorney: Brian J. Markowitz  
Daniel Goldenberg  
Goldstein Hall PLLC  
80 Broad Street, Suite 303  
New York, New York 10004

[Caption as in Form 416A, 416B, or 416D, as appropriate]

**NOTICE OF APPEAL AND STATEMENT OF ELECTION****Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s):  
1988 Morris Avenue LLC, 1974 Morris Avenue LLC, 700 Beck Street LLC,  
1143 Forest Avenue LLC, 1821 Topping Avenue LLC
2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

☐ Plaintiff☒ Defendant☐ Other (describe) \_\_\_\_\_

For appeals in a bankruptcy case and not in an adversary proceeding.

☐ Debtor☐ Creditor☐ Trustee☐ Other (describe) \_\_\_\_\_**Part 2: Identify the subject of this appeal**

Post trial decision regarding claims for specific performance of five contracts of sale for the sale

1. Describe the judgment, order, or decree appealed from: of 5 properties.
2. State the date on which the judgment, order, or decree was entered: September 3, 2020

**Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

1. Party: 700 Beck Street LLC Attorney: Brian J. Markowitz  
Daniel Goldenberg  
Goldstein Hall PLLC  
80 Broad Street, Suite 303  
New York, New York 10004
2. Party: 1143 Forest Avenue LLC Attorney: Brian J. Markowitz  
Daniel Goldenberg  
Goldstein Hall PLLC  
80 Broad Street, Suite 303  
New York, New York 10004

[Caption as in Form 416A, 416B, or 416D, as appropriate]

**NOTICE OF APPEAL AND STATEMENT OF ELECTION****Part 1: Identify the appellant(s)**

1. Name(s) of appellant(s):  
1988 Morris Avenue LLC, 1974 Morris Avenue LLC, 700 Beck Street LLC,  
1143 Forest Avenue LLC, 1821 Topping Avenue LLC
2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

☐ Plaintiff☒ Defendant☐ Other (describe) \_\_\_\_\_

For appeals in a bankruptcy case and not in an adversary proceeding.

☐ Debtor☐ Creditor☐ Trustee☐ Other (describe) \_\_\_\_\_**Part 2: Identify the subject of this appeal**

Post trial decision regarding claims for specific performance of five contracts of sale for the sale of 5 properties.

1. Describe the judgment, order, or decree appealed from: \_\_\_\_\_
2. State the date on which the judgment, order, or decree was entered: September 3, 2020

**Part 3: Identify the other parties to the appeal**

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):


1. Party: 1821 Topping Avenue LLC Attorney: Brian J. Markowitz  
Daniel Goldenberg  
Goldstein Hall PLLC  
80 Broad Street, Suite 303  
New York, New York 10004
2. Party: \_\_\_\_\_ Attorney: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)**

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. § 158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

- ☐ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

**Part 5: Sign below**

  
\_\_\_\_\_  
Signature of attorney for appellant(s) (or appellant(s)  
if not represented by an attorney)

Date: September 10, 2020

Name, address, and telephone number of attorney  
(or appellant(s) if not represented by an attorney):

\_\_\_\_\_  
Brian J. Markowitz  
\_\_\_\_\_  
Daniel Goldenberg  
\_\_\_\_\_  
Goldstein Hall PLLC  
80 Broad Street, Suite 303  
New York, New York 10004

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

## **EXHIBIT B**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

FMTB BH LLC,

Case No: 18-42228-cec

Debtor.

-----X

**ORDER AUTHORIZING DEBTOR TO ASSUME  
EXECUTORY CONTRACTS AND GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of FMTB BH LLC (the “Debtor”) pursuant to section 365 of the Bankruptcy Code for an order Authorizing the Debtor to Assume Certain Executory Contracts and Granting Related Relief (ECF Doc. No. 80);<sup>1</sup> and the Defendants having filed their Opposition to the Motion (the “Objection”) (ECF Doc. No. ~~82~~ 83 (CEC)); and the Debtor having filed its Reply to the Objection (ECF Doc. No. 84); and Debtor having filed the Declaration of Joel Leifer in Support of the Motion (ECF Doc. No. 80-3) and Supplemental Declaration of Joel Leifer in Support of the Motion (ECF Doc. No. 84-1); and the Court having held a hearing on the Motion on September 23, 2020 and the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (d) notice of the Motion and the Hearing was sufficient under the circumstances, (e) the Contracts (as defined in the Motion) are “executory contracts” subject to section 365 of the Bankruptcy Code, (f) the assumption of the Contracts approved herein represents a reasonable exercise of the Debtor’s business judgment, (g) the Motion is procedurally proper pursuant to Bankruptcy Rule 6006(e) and (h) the relief requested in the Motion and granted herein is

necessary and appropriate to carry out the provisions of the Bankruptcy Code and is in the best interests of the Debtor, its creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing established cause for the relief granted herein, it is

**ORDERED**, that the Objection is overruled; and it is further

**ORDERED**, the Motion is granted to the extent provided herein (CEC) and pursuant to section 365(a) of the Bankruptcy Code, the Debtor is authorized to assume the Contracts (together, and including all exhibits, amendments, supplements or modifications thereto) and schedule a closing (the "Closing") in accordance with the terms of such Contracts and the Defendants are directed to transfer title to the Debtor at such Closing upon payment of the purchase price due under the Contracts to the Defendants at Closing strictly in accordance with the provisions of the Contracts; and it is further

**ORDERED**, that notwithstanding the provision of the Contracts that require the Premises to be delivered vacant at closing, Defendants shall be excused from compliance with such provision but only to the extent Defendants are unable to comply due to the provisions of Executive Order 202.66 signed by Governor Cuomo; and it is further

**ORDERED**, that within 30 days of entry of this Order, the Debtor shall pay to the Defendants 36 months of mortgage payments (October 4, 2017 through October 4, 2020) due under the 1988 Morris Addendum (\$2,957.50 per month) in the amount of \$106,470.00 and 36 months of mortgage payments due under the 1821 Topping Addendum (\$3,920.00 per month) in the amount of \$141,120.00, for a total of \$247,590.00 (collectively, the "Mortgage Payments")

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<sup>1</sup> Capitalized terms not otherwise defined in this Order shall have the same meaning as set forth in the Motion.

and upon making such Mortgage Payments, the Debtor shall be deemed to have cured all defaults under the Contracts within the meaning of 11 U.S.C. § 365(b)(1)(A); and it is further

**ORDERED**, that upon payment at Closing of the balance of the purchase price due under the Contracts in the amount of \$2,113,755.00, plus any additional mortgage payments due under the 1988 Morris Addendum and 1821 Topping Addendum at Closing for the period subsequent to October 4, 2020, the Debtor shall have satisfied all of its monetary obligations due to the ~~non-~~debtor parties to Defendants under (CEC) the Contracts as of the Closing.

Dated: Brooklyn, New York  
September 30, 2020



  
Carla E. Craig  
United States Bankruptcy Judge



## **EXHIBIT C**

STAHL & ZELMANOVITZ

September 22, 2020

**By ECF**

The Honorable Allyne R. Ross  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: **FMTB BH LLC, Plaintiff-Appellee v.  
v. 1988 Morris Avenue LLC et al., Defendants-Appellants  
Case No. 20-cv-04296 (ARR)**

Dear Judge Ross:

We are attorneys for plaintiff-appellee FMTB BH LLC (“FMTB”) in this action, which involves the appeal from the September 2, 2020 Decision and Order of the United States Bankruptcy Court, E.D.N.Y. (Craig, J.) filed by defendants-appellees 1988 Morris Avenue LLC, 1974 Morris Avenue LLC, 700 Beck Street LLC, 1143 Forest Avenue LLC, and 1821 Topping Avenue LLC (collectively, the “Appellants”).<sup>1</sup> We respectfully submit this letter to request a pre-motion conference in connection with FMTB’s prospective motion to dismiss the appeal for lack of jurisdiction pursuant to 28 U.S.C. § 158(a). The appeal is interlocutory and is not ripe for determination at this time.

**Background**

Appellants executed five contracts to sell five separate properties to FMTB (the “Contracts”). Appellants fixed December 18, 2017, time being of the essence, for the closings under the Contracts. FMTB did not appear on the Law Day, claiming that Appellants breached the Contracts, thereby excusing FMTB’s appearance at closing. Appellants took the position that FMTB breached the Contracts by not appearing for the closings. FMTB thereafter filed its chapter 11 case and commenced an adversary proceeding against Appellants seeking specific performance of the Contracts or, alternatively, for damages for Appellants’ breach. Appellants asserted counterclaims for damages. After a two-day trial, the Bankruptcy Court rendered its Decision dated September 2, 2020 (the “Decision,” a copy of which is attached to Appellants’ Notice of Appeal), finding that (i) Appellants breached the Contracts, and (ii) FMTB did not default under the Contracts by failing to appear and tender performance on the Law Day. The Bankruptcy Court further concluded that FMTB’s specific performance claim and Appellants’ counterclaims had to be addressed in the context of the Bankruptcy Case, and dismissed those claims without prejudice. Simultaneously with the Decision, the Bankruptcy Court entered an “Order (I) DETERMINING THAT THE PLAINTIFF DID NOT BREACH THE CONTRACTS AND (II) SCHEDULING A

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<sup>1</sup> FMTB is the debtor in its own chapter 11 case, *In re FMTB BH LLC*, case no. 18-42228-CEC, and is the plaintiff in the adversary proceeding filed in the bankruptcy court in that case, 18-1052-CEC (the “Adversary Proceeding”).

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HEARING ON ASSUMPTION OF THE CONTRACTS.” (A copy of this Order is also attached to the Notice of Appeal.) The Order directed FMTB to file a motion to assume the Contracts by September 9, 2020, which it has now done, and the motion is scheduled to be heard by the Bankruptcy Court on September 23, 2020.

Appellants then filed a notice of appeal from the Decision and Order of the Bankruptcy Court to this Court. On September 9, 2020, the Debtor filed its motion to assume the Contracts, which is scheduled to be heard by the Bankruptcy Court on September 23, 2020.

### **The Appeal Should Be Dismissed**

Pursuant to 28 U.S.C. § 158(a), district courts of the United States have jurisdiction to hear appeals from “*final* judgments, orders, and decrees entered by bankruptcy courts in cases and proceedings.” *Ritzen Group, Inc. v. Jackson Massonry, LLC*, 140 S. Ct. 582, 586 (2020) (emphasis added) (internal quotations omitted); *Concrete Capital, LLC v. Olympic Prop. Partners (In re Olympic Prop. Partners, LLC)*, 566 B.R. 334 (S.D.N.Y. 2017) (Karas, J.) (citing *In re DBSD N. Am., Inc.*, 634 F.3d 79, 88 (2d Cir. 2011)). “By providing for appeals from final decisions in bankruptcy ‘proceedings,’ as distinguished from bankruptcy ‘cases’, Congress made ‘orders in bankruptcy cases . . . immediately appeal[able] if they finally dispose of discrete disputes within the larger [bankruptcy] case.’” *Ritzen Group, Inc.*, 140 S. Ct. at 587; *see also Wynn v. Reiber (In re Wynn)*, 778 F. App’x 40 (2d Cir. 2019) (“bankruptcy order is final if it completely resolves all of the issues pertaining to a discrete claim, including issues as to proper relief”); *Concrete Capital, LLC*, 566 B.R. at 338 (recognizing “[a] bankruptcy case involves an aggregation of individual controversies, many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor.” (quoting *Bullard v. Blue Hills Bank*, 135 S. Ct. 1686, 1691-92 (2015))). To be considered “final,” a judgment, order, or decree must “completely resolve all of the issues pertaining to a discrete claim” or dispute. *Shimer v. Fugazy (In re Fugazy Express, Inc.)*, 982 F.2d 769, 776 (2d Cir. 1992); *In re Integrated Res.*, 3 F.3d 49, 53 (2d Cir. 1993); *Veeraswamy v. Jones*, 2019 U.S. Dist. LEXIS 70927, at \*1-2 (E.D.N.Y., Apr. 26, 2019) (“A ‘dispute’ for appealability purposes in the bankruptcy context, means at least an entire claim on which relief may be granted.” (citing *In re Fugazy Express, Inc.*, 982 F.2d at 775))).

As stated by the Second Circuit:

We have thus recognized that Congress intended to allow for immediate appeal in bankruptcy cases of orders that “finally dispose of *discrete disputes within the larger case*.” . . . By “disputes” we do not mean merely compelling contentions with respect to separable issues; rather, we apply the same standards of finality that we apply to an appeal under 28 U.S.C. § 1291. . .

*In re Fugazy Express, Inc.*, 982 F.2d at 775-76 (emphasis added) (internal citations omitted); *Concrete Capital, LLC*, 566 B.R. at 338 (“The Court lacks jurisdiction over this appeal because the Bankruptcy Order is not final as it pertains to the amount of fees, costs, and damages.”).

Where the Bankruptcy Court, as here, expressly declines to award the relief requested and leaves the matter open to be decided based on further motion practice, the order is not deemed

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final for purposes of appeal. The Decision and Order of the Bankruptcy Court here expressly requires further proceedings to determine the dispute at issue: FMTB's right to specific performance of the Contracts and Appellants' counterclaims for amounts owed to them under the Addendums to the Contracts. Indeed, both issues are likely to be resolved by the upcoming motion practice in the Bankruptcy Court. If FMTB's motion to assume the Contracts is approved by the Bankruptcy Court, there will be no need for further litigation on FMTB's specific performance claim as the Bankruptcy Court's assumption order will require the parties to live up to their contractual obligations. Similarly, if assumption is approved, the Debtor will have to cure any monetary defaults under the Contracts by paying the amounts due under the Contracts. There will not be the need for subsequent litigation by the parties with respect to alleged defaults. If Appellants are permitted to proceed with their appeal of the interlocutory, or non-final, order, multiple inefficient litigation will result.

The need for subsequent motion practice for the assumption of the executory contracts at issue makes it clear that the Decision and Order is non-final for purposes of appeal. *Cf. In re WorldCom, Inc.*, 02-13533 (AJG), 2005 U.S. Dist. LEXIS 9692, 2005 WL 1208519, at \*5 (S.D.N.Y., May 19, 2005) (a bankruptcy court order would be deemed final where it approves the assumption or assignment of an executory contract).

Thus, the Court should dismiss Appellants' appeals so that FMTB is not forced to respond and expend further time and money before all the issues have been finally decided by the Bankruptcy Court.

Respectfully submitted,



Joseph Zelmanovitz (JZ 0085)

cc: Brian J. Markowitz, Esq.  
 Attorneys for Appellants (by ECF)  
 Fred B. Ringel, Esq.  
 Attorneys for Debtor (by ECF)

## **EXHIBIT D**

STAHL & ZELMANOVITZ

October 2, 2020

**By FedEx**

Brian Hsu, Esq.  
Goldstein Hall PLLC  
80 Broad Street, Suite 303  
New York, New York 10004

Re:   **Seller:**                   **1988 Morris Ave LLC**  
          **Purchaser:**           **FMTB BH LLC**  
          **Premises:**           **1988 Morris Avenue, Bronx, NY 10453**

Dear Mr. Hsu:

We are attorneys for the above-referenced Purchaser, FMTB BH LLC.

Please be advised that pursuant to the Order Authorizing Debtor to Assume Executory Contracts and Granting Related Relief, entered in the United States Bankruptcy Court, Eastern District of New York, on October 1, 2020 (*In re: FMTB BH LLC*, Chapter 11, Case No. 18-42228-cec) (the "Order"), notice is hereby given that the closing on the Contract of Sale for the Premises, dated as of June 19, 2017, as amended by Addendum dated October 4, 2017, between the above-referenced Seller and Purchaser (collectively, the "Contract"), will take place at the offices of Goldstein Hall PLLC, 80 Broad Street, Suite 303, New York, NY 10004, on **October 26, 2020, at 10:00 a.m., TIME BEING OF THE ESSENCE**. A copy of the Order is enclosed.

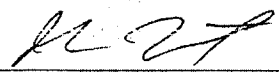
Please be further advised that in accordance with the Order, to the extent the Contract requires the Premises to be delivered vacant at closing, Seller shall be excused from compliance with such provision but only to the extent Seller is unable to comply due to the provisions of Executive Order 202.66 signed by Governor Cuomo. All other conditions and requirements set forth in the Contract are not waived.

Should Seller fail to close title on the above date in accordance with the terms of the Contract, please be advised that Purchaser will pursue any and all available and appropriate legal and equitable remedies on behalf of Purchaser.

This notice shall not serve to act as a waiver of any of Purchaser's rights and remedies, all of which are expressly reserved.

Very truly yours,

STAHL & ZELMANOVITZ

By:   
Joseph Zelmanovitz  
A Member of the Firm

747 Third Avenue  
New York, N.Y. 10017  
(212) 326-6422

Fax: (212) 326-6402

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

FMTB BH LLC,

Case No: 18-42228-cec

Debtor.

-----X

**ORDER AUTHORIZING DEBTOR TO ASSUME  
EXECUTORY CONTRACTS AND GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of FMTB BH LLC (the “Debtor”) pursuant to section 365 of the Bankruptcy Code for an order Authorizing the Debtor to Assume Certain Executory Contracts and Granting Related Relief (ECF Doc. No. 80);<sup>1</sup> and the Defendants having filed their Opposition to the Motion (the “Objection”) (ECF Doc. No. ~~82~~ 83 (CEC)); and the Debtor having filed its Reply to the Objection (ECF Doc. No. 84); and Debtor having filed the Declaration of Joel Leifer in Support of the Motion (ECF Doc. No. 80-3) and Supplemental Declaration of Joel Leifer in Support of the Motion (ECF Doc. No. 84-1); and the Court having held a hearing on the Motion on September 23, 2020 and the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (d) notice of the Motion and the Hearing was sufficient under the circumstances, (e) the Contracts (as defined in the Motion) are “executory contracts” subject to section 365 of the Bankruptcy Code, (f) the assumption of the Contracts approved herein represents a reasonable exercise of the Debtor’s business judgment, (g) the Motion is procedurally proper pursuant to Bankruptcy Rule 6006(e) and (h) the relief requested in the Motion and granted herein is

necessary and appropriate to carry out the provisions of the Bankruptcy Code and is in the best interests of the Debtor, its creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing established cause for the relief granted herein, it is

**ORDERED**, that the Objection is overruled; and it is further

**ORDERED**, the Motion is granted to the extent provided herein (CEC) and pursuant to section 365(a) of the Bankruptcy Code, the Debtor is authorized to assume the Contracts (together, and including all exhibits, amendments, supplements or modifications thereto) and schedule a closing (the "Closing") in accordance with the terms of such Contracts and the Defendants are directed to transfer title to the Debtor at such Closing upon payment of the purchase price due under the Contracts to the Defendants at Closing strictly in accordance with the provisions of the Contracts; and it is further

**ORDERED**, that notwithstanding the provision of the Contracts that require the Premises to be delivered vacant at closing, Defendants shall be excused from compliance with such provision but only to the extent Defendants are unable to comply due to the provisions of Executive Order 202.66 signed by Governor Cuomo; and it is further

**ORDERED**, that within 30 days of entry of this Order, the Debtor shall pay to the Defendants 36 months of mortgage payments (October 4, 2017 through October 4, 2020) due under the 1988 Morris Addendum (\$2,957.50 per month) in the amount of \$106,470.00 and 36 months of mortgage payments due under the 1821 Topping Addendum (\$3,920.00 per month) in the amount of \$141,120.00, for a total of \$247,590.00 (collectively, the "Mortgage Payments")

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1 Capitalized terms not otherwise defined in this Order shall have the same meaning as set forth in the Motion.

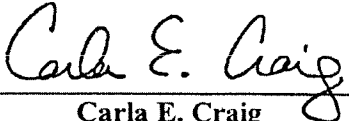


and upon making such Mortgage Payments, the Debtor shall be deemed to have cured all defaults under the Contracts within the meaning of 11 U.S.C. § 365(b)(1)(A); and it is further

**ORDERED**, that upon payment at Closing of the balance of the purchase price due under the Contracts in the amount of \$2,113,755.00, plus any additional mortgage payments due under the 1988 Morris Addendum and 1821 Topping Addendum at Closing for the period subsequent to October 4, 2020, the Debtor shall have satisfied all of its monetary obligations due to the ~~non-debtor parties to~~ Defendants under (CEC) the Contracts as of the Closing.

Dated: Brooklyn, New York  
September 30, 2020



  
Carla E. Craig  
United States Bankruptcy Judge

STAHL & ZELMANOVITZ

October 2, 2020

**By FedEx**

Brian Hsu, Esq.  
Goldstein Hall PLLC  
80 Broad Street, Suite 303  
New York, New York 10004

Re:	<b>Seller:</b>	<b>1974 Morris Ave LLC</b>
	<b>Purchaser:</b>	<b>FMTB BH LLC</b>
	<b>Premises:</b>	<b>1974 Morris Avenue, Bronx, NY 10457</b>

Dear Mr. Hsu:

We are attorneys for the above-referenced Purchaser, FMTB BH LLC.

Please be advised that pursuant to the Order Authorizing Debtor to Assume Executory Contracts and Granting Related Relief, entered in the United States Bankruptcy Court, Eastern District of New York, on October 1, 2020 (*In re: FMTB BH LLC*, Chapter 11, Case No. 18-42228-cec) (the "Order"), notice is hereby given that the closing on the Contract of Sale for the Premises, dated as of June 19, 2017, as amended by Addendum dated October 4, 2017, between the above-referenced Seller and Purchaser (collectively, the "Contract"), will take place at the offices of Goldstein Hall PLLC, 80 Broad Street, Suite 303, New York, NY 10004, on **October 26, 2020, at 10:00 a.m., TIME BEING OF THE ESSENCE**. A copy of the Order is enclosed.

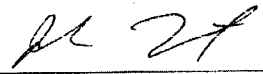
Please be further advised that in accordance with the Order, to the extent the Contract requires the Premises to be delivered vacant at closing, Seller shall be excused from compliance with such provision but only to the extent Seller is unable to comply due to the provisions of Executive Order 202.66 signed by Governor Cuomo. All other conditions and requirements set forth in the Contract are not waived.

Should Seller fail to close title on the above date in accordance with the terms of the Contract, please be advised that Purchaser will pursue any and all available and appropriate legal and equitable remedies on behalf of Purchaser.

This notice shall not serve to act as a waiver of any of Purchaser's rights and remedies, all of which are expressly reserved.

Very truly yours,

STAHL & ZELMANOVITZ

By:   
Joseph Zelmanovitz  
A Member of the Firm

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New York, N.Y. 10017  
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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

FMTB BH LLC,

Case No: 18-42228-cec

Debtor.

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necessary and appropriate to carry out the provisions of the Bankruptcy Code and is in the best interests of the Debtor, its creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing established cause for the relief granted herein, it is

**ORDERED**, that the Objection is overruled; and it is further

**ORDERED**, the Motion is granted to the extent provided herein (CEC) and pursuant to section 365(a) of the Bankruptcy Code, the Debtor is authorized to assume the Contracts (together, and including all exhibits, amendments, supplements or modifications thereto) and schedule a closing (the "Closing") in accordance with the terms of such Contracts and the Defendants are directed to transfer title to the Debtor at such Closing upon payment of the purchase price due under the Contracts to the Defendants at Closing strictly in accordance with the provisions of the Contracts; and it is further

**ORDERED**, that notwithstanding the provision of the Contracts that require the Premises to be delivered vacant at closing, Defendants shall be excused from compliance with such provision but only to the extent Defendants are unable to comply due to the provisions of Executive Order 202.66 signed by Governor Cuomo; and it is further

**ORDERED**, that within 30 days of entry of this Order, the Debtor shall pay to the Defendants 36 months of mortgage payments (October 4, 2017 through October 4, 2020) due under the 1988 Morris Addendum (\$2,957.50 per month) in the amount of \$106,470.00 and 36 months of mortgage payments due under the 1821 Topping Addendum (\$3,920.00 per month) in the amount of \$141,120.00, for a total of \$247,590.00 (collectively, the "Mortgage Payments")

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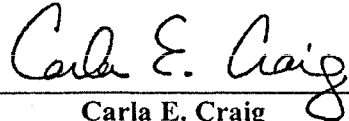
<sup>1</sup> Capitalized terms not otherwise defined in this Order shall have the same meaning as set forth in the Motion.

and upon making such Mortgage Payments, the Debtor shall be deemed to have cured all defaults under the Contracts within the meaning of 11 U.S.C. § 365(b)(1)(A); and it is further

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Dated: Brooklyn, New York  
September 30, 2020



  
Carla E. Craig  
United States Bankruptcy Judge

STAHL & ZELMANOVITZ

October 2, 2020

**By FedEx**

Brian Hsu, Esq.  
Goldstein Hall PLLC  
80 Broad Street, Suite 303  
New York, New York 10004

Re:	<b>Seller:</b>	<b>1821 Topping Ave LLC</b>
	<b>Purchaser:</b>	<b>FMTB BH LLC</b>
	<b>Premises:</b>	<b>1821 Topping Avenue, Bronx, NY 10457</b>

Dear Mr. Hsu:

We are attorneys for the above-referenced Purchaser, FMTB BH LLC.

Please be advised that pursuant to the Order Authorizing Debtor to Assume Executory Contracts and Granting Related Relief, entered in the United States Bankruptcy Court, Eastern District of New York, on October 1, 2020 (*In re: FMTB BH LLC*, Chapter 11, Case No. 18-42228-cec) (the "Order"), notice is hereby given that the closing on the Contract of Sale for the Premises, dated as of June 19, 2017, as amended by Addendum dated October 4, 2017, between the above-referenced Seller and Purchaser (collectively, the "Contract"), will take place at the offices of Goldstein Hall PLLC, 80 Broad Street, Suite 303, New York, NY 10004, on **October 26, 2020, at 10:00 a.m., TIME BEING OF THE ESSENCE**. A copy of the Order is enclosed.

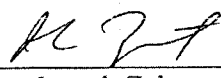
Please be further advised that in accordance with the Order, to the extent the Contract requires the Premises to be delivered vacant at closing, Seller shall be excused from compliance with such provision but only to the extent Seller is unable to comply due to the provisions of Executive Order 202.66 signed by Governor Cuomo. All other conditions and requirements set forth in the Contract are not waived.

Should Seller fail to close title on the above date in accordance with the terms of the Contract, please be advised that Purchaser will pursue any and all available and appropriate legal and equitable remedies on behalf of Purchaser.

This notice shall not serve to act as a waiver of any of Purchaser's rights and remedies, all of which are expressly reserved.

Very truly yours,

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By:   
Joseph Zelmanovitz  
A Member of the Firm

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----X

In re:

Chapter 11

FMTB BH LLC,

Case No: 18-42228-cec

Debtor.

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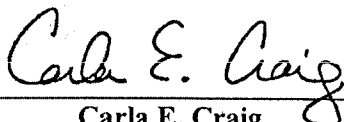


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Dated: Brooklyn, New York  
September 30, 2020



  
Carla E. Craig  
United States Bankruptcy Judge

STAHL & ZELMANOVITZ

October 2, 2020

**By FedEx**

Brian Hsu, Esq.  
Goldstein Hall PLLC  
80 Broad Street, Suite 303  
New York, New York 10004

Re:	<b>Seller:</b>	<b>700 Beck Street LLC</b>
	<b>Purchaser:</b>	<b>FMTB BH LLC</b>
	<b>Premises:</b>	<b>770 Beck Street, Bronx, NY 10455</b>

Dear Mr. Hsu:

We are attorneys for the above-referenced Purchaser, FMTB BH LLC.

Please be advised that pursuant to the Order Authorizing Debtor to Assume Executory Contracts and Granting Related Relief, entered in the United States Bankruptcy Court, Eastern District of New York, on October 1, 2020 (*In re: FMTB BH LLC*, Chapter 11, Case No. 18-42228-cec) (the "Order"), notice is hereby given that the closing on the Contract of Sale for the Premises, dated as of June 19, 2017, as amended by Addendum dated October 4, 2017, between the above-referenced Seller and Purchaser (collectively, the "Contract"), will take place at the offices of Goldstein Hall PLLC, 80 Broad Street, Suite 303, New York, NY 10004, on **October 26, 2020, at 10:00 a.m., TIME BEING OF THE ESSENCE**. A copy of the Order is enclosed.

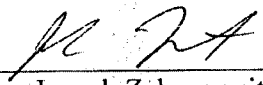
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This notice shall not serve to act as a waiver of any of Purchaser's rights and remedies, all of which are expressly reserved.

Very truly yours,

STAHL & ZELMANOVITZ

By:   
Joseph Zelmanovitz  
A Member of the Firm

747 Third Avenue  
New York, N.Y. 10017  
(212) 826-6422

Fax: (212) 826-6402

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

FMTB BH LLC,

Case No: 18-42228-cec

Debtor.

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**ORDER AUTHORIZING DEBTOR TO ASSUME  
EXECUTORY CONTRACTS AND GRANTING RELATED RELIEF**

Upon the motion (the “Motion”) of FMTB BH LLC (the “Debtor”) pursuant to section 365 of the Bankruptcy Code for an order Authorizing the Debtor to Assume Certain Executory Contracts and Granting Related Relief (ECF Doc. No. 80);<sup>1</sup> and the Defendants having filed their Opposition to the Motion (the “Objection”) (ECF Doc. No. ~~82~~ 83 (CEC)); and the Debtor having filed its Reply to the Objection (ECF Doc. No. 84); and Debtor having filed the Declaration of Joel Leifer in Support of the Motion (ECF Doc. No. 80-3) and Supplemental Declaration of Joel Leifer in Support of the Motion (ECF Doc. No. 84-1); and the Court having held a hearing on the Motion on September 23, 2020 and the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b), (d) notice of the Motion and the Hearing was sufficient under the circumstances, (e) the Contracts (as defined in the Motion) are “executory contracts” subject to section 365 of the Bankruptcy Code, (f) the assumption of the Contracts approved herein represents a reasonable exercise of the Debtor’s business judgment, (g) the Motion is procedurally proper pursuant to Bankruptcy Rule 6006(e) and (h) the relief requested in the Motion and granted herein is

necessary and appropriate to carry out the provisions of the Bankruptcy Code and is in the best interests of the Debtor, its creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing established cause for the relief granted herein, it is

**ORDERED**, that the Objection is overruled; and it is further

**ORDERED**, the Motion is granted to the extent provided herein (CEC) and pursuant to section 365(a) of the Bankruptcy Code, the Debtor is authorized to assume the Contracts (together, and including all exhibits, amendments, supplements or modifications thereto) and schedule a closing (the “Closing”) in accordance with the terms of such Contracts and the Defendants are directed to transfer title to the Debtor at such Closing upon payment of the purchase price due under the Contracts to the Defendants at Closing strictly in accordance with the provisions of the Contracts; and it is further

**ORDERED**, that notwithstanding the provision of the Contracts that require the Premises to be delivered vacant at closing, Defendants shall be excused from compliance with such provision but only to the extent Defendants are unable to comply due to the provisions of Executive Order 202.66 signed by Governor Cuomo; and it is further

**ORDERED**, that within 30 days of entry of this Order, the Debtor shall pay to the Defendants 36 months of mortgage payments (October 4, 2017 through October 4, 2020) due under the 1988 Morris Addendum (\$2,957.50 per month) in the amount of \$106,470.00 and 36 months of mortgage payments due under the 1821 Topping Addendum (\$3,920.00 per month) in the amount of \$141,120.00, for a total of \$247,590.00 (collectively, the “Mortgage Payments”)

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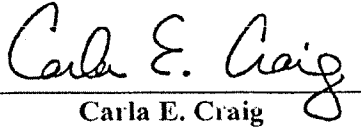
<sup>1</sup> Capitalized terms not otherwise defined in this Order shall have the same meaning as set forth in the Motion.

and upon making such Mortgage Payments, the Debtor shall be deemed to have cured all defaults under the Contracts within the meaning of 11 U.S.C. § 365(b)(1)(A); and it is further

**ORDERED**, that upon payment at Closing of the balance of the purchase price due under the Contracts in the amount of \$2,113,755.00, plus any additional mortgage payments due under the 1988 Morris Addendum and 1821 Topping Addendum at Closing for the period subsequent to October 4, 2020, the Debtor shall have satisfied all of its monetary obligations due to the ~~non-debtor parties to~~ Defendants under (CEC) the Contracts as of the Closing.

Dated: Brooklyn, New York  
September 30, 2020



  
Carla E. Craig  
United States Bankruptcy Judge

STAHL & ZELMANOVITZ

October 2, 2020

**By FedEx**

Brian Hsu, Esq.  
Goldstein Hall PLLC  
80 Broad Street, Suite 303  
New York, New York 10004

Re:     **Seller:**                   1143 Forest Ave LLC  
          **Purchaser:**           FMTB BH LLC  
          **Premises:**           1143 Forest Avenue, Bronx, NY 10456

Dear Mr. Hsu:

We are attorneys for the above-referenced Purchaser, FMTB BH LLC.

Please be advised that pursuant to the Order Authorizing Debtor to Assume Executory Contracts and Granting Related Relief, entered in the United States Bankruptcy Court, Eastern District of New York, on October 1, 2020 (*In re: FMTB BH LLC*, Chapter 11, Case No. 18-42228-cec) (the "Order"), notice is hereby given that the closing on the Contract of Sale for the Premises, dated as of June 19, 2017, as amended by Addendum dated October 4, 2017, between the above-referenced Seller and Purchaser (collectively, the "Contract"), will take place at the offices of Goldstein Hall PLLC, 80 Broad Street, Suite 303, New York, NY 10004, on **October 26, 2020, at 10:00 a.m., TIME BEING OF THE ESSENCE**. A copy of the Order is enclosed.

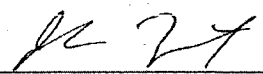
Please be further advised that in accordance with the Order, to the extent the Contract requires the Premises to be delivered vacant at closing, Seller shall be excused from compliance with such provision but only to the extent Seller is unable to comply due to the provisions of Executive Order 202.66 signed by Governor Cuomo. All other conditions and requirements set forth in the Contract are not waived.

Should Seller fail to close title on the above date in accordance with the terms of the Contract, please be advised that Purchaser will pursue any and all available and appropriate legal and equitable remedies on behalf of Purchaser.

This notice shall not serve to act as a waiver of any of Purchaser's rights and remedies, all of which are expressly reserved.

Very truly yours,

STAHL & ZELMANOVITZ

By:   
Joseph Zelmanovitz  
A Member of the Firm

747 Third Avenue  
New York, N.Y. 10017  
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necessary and appropriate to carry out the provisions of the Bankruptcy Code and is in the best interests of the Debtor, its creditors and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing established cause for the relief granted herein, it is

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**ORDERED**, that notwithstanding the provision of the Contracts that require the Premises to be delivered vacant at closing, Defendants shall be excused from compliance with such provision but only to the extent Defendants are unable to comply due to the provisions of Executive Order 202.66 signed by Governor Cuomo; and it is further

**ORDERED**, that within 30 days of entry of this Order, the Debtor shall pay to the Defendants 36 months of mortgage payments (October 4, 2017 through October 4, 2020) due under the 1988 Morris Addendum (\$2,957.50 per month) in the amount of \$106,470.00 and 36 months of mortgage payments due under the 1821 Topping Addendum (\$3,920.00 per month) in the amount of \$141,120.00, for a total of \$247,590.00 (collectively, the "Mortgage Payments")

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<sup>1</sup> Capitalized terms not otherwise defined in this Order shall have the same meaning as set forth in the Motion.

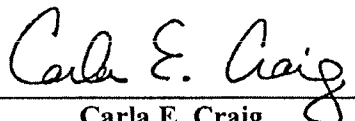


and upon making such Mortgage Payments, the Debtor shall be deemed to have cured all defaults under the Contracts within the meaning of 11 U.S.C. § 365(b)(1)(A); and it is further

**ORDERED**, that upon payment at Closing of the balance of the purchase price due under the Contracts in the amount of \$2,113,755.00, plus any additional mortgage payments due under the 1988 Morris Addendum and 1821 Topping Addendum at Closing for the period subsequent to October 4, 2020, the Debtor shall have satisfied all of its monetary obligations due to the ~~non-debtor parties to~~ Defendants under (CEC) the Contracts as of the Closing.

Dated: Brooklyn, New York  
September 30, 2020



  
Carla E. Craig  
United States Bankruptcy Judge

## **EXHIBIT E**

**Joseph Zelmanovitz**

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**From:** ecf\_bounces@nyed.uscourts.gov  
**Sent:** Wednesday, October 21, 2020 3:51 PM  
**To:** nobody@nyed.uscourts.gov  
**Subject:** Activity in Case 1:20-cv-04296-ARR FMTB BH LLC v. 1988 Morris Avenue LLC et al Order

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court**

**Eastern District of New York**

**Notice of Electronic Filing**

The following transaction was entered on 10/21/2020 at 3:51 PM EDT and filed on 10/21/2020

**Case Name:** FMTB BH LLC v. 1988 Morris Avenue LLC et al

**Case Number:** 1:20-cv-04296-ARR

**Filer:**

**Document Number:** No document attached

**Docket Text:**

**ORDER:** The court has reviewed the parties' pre-motion letters concerning plaintiff-appellee's anticipated motion to dismiss and determined that a pre-motion conference is not necessary. The court therefore grants plaintiff-appellee permission to bring the motion. Plaintiff-appellee's motion and supporting papers shall be filed electronically no later than October 30, 2020; defendants-appellants' opposition papers shall be filed electronically no later than November 9, 2020; plaintiff-appellee's reply papers, if any, shall be filed electronically no later than November 13, 2020. This schedule may be altered only with the permission of the court. Ordered by Judge Allyne R. Ross on 10/21/2020. (Roeck, Victoria)

**1:20-cv-04296-ARR Notice has been electronically mailed to:**

Joseph Zelmanovitz joezelmanovitz@aol.com, aneuhaus@szlawllp.com

Brian J. Markowitz bmarkowitz@goldsteinhall.com, litigation@goldsteinhall.com

**1:20-cv-04296-ARR Notice will not be electronically mailed to:**